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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,407	08/27/2001	Hideki Noma	450108-02924	4158

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FROMMER LAWRENCE & HAUG  
745 FIFTH AVENUE- 10TH FL.  
NEW YORK, NY 10151

EXAMINER
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THEIN, MARIA TERESA T

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/914,407

Applicant(s)

NOMA, HIDEKI

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's "Amendment under 37 CFR 1.121" filed on May 23, 2005 has been considered with the following effect.

Applicant's response by virtue of amendment to claim 30 has overcome the Examiner's claim objection.

Applicant's response by virtue of amendment to claims 21-25 and 46-50 has overcome the Examiner's rejection of such claims under 35 USC 101.

Claims 1, 6, 11, 16, 21, 24-26, 30-31, 36, 41, 46, 49 and 50 are amended.  
Claims 51-81 are canceled. Claims 1-50 remain pending in this application.

### ***Information Disclosure Statement***

The Japan Application Nos. 1-1-3740 and 11-188678 were not considered because there were no English translations. In addition, Japan Application No. 11-126017 is not considered because there was no copy provided.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-50 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,260,750 to Barad et al.**

Regarding claims 1, 6, 11, 16, and 21, Barad discloses a system, method, device, and computer program for purchasing or receiving an order for a virtual creature (personalized toy) existing as a software and programmed to act or more, comprising: first communication means provided on the order sender side (accessing a computer in 110 is performed by customer 60) of the virtual creature (collecting orders, col. 5, lines 50-61, Figure 5); second communication means provided on the order receiving side of the virtual creature (processing ordering, col. 5, lines 50-51; col. 6, lines 52-61, Figure 5); a communication path to connect between the first and the second communication means (Figure 5; col. 5, lines 50-57; col. 6, lines 50-59); the second communication means comprising: question data transmission means for transmitting questions data regarding changeable items in the software (select attributes to change) of the virtual creature and/or hardware holding a recording medium in which the software is stored to the first communication means that accesses via the communication path (Figure 5, col. 5, line 66- col. 6, line 15; col. 6, lines 31-39); wherein said changeable items include internal conditions, which include at least one of a emotional tendency, an instinct tendency, or an action configuration program (the toy may be programmed to say a .....move in a particular way, col. 3, lines 63-65); and data processing means for conducting the predetermined data processing in order to form the virtual creature and/or the hardware reflecting the order sender's answer to the question to be

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transmitted from the first communication means via the communication path (Figure 5, col. 6, lines 37-40).

Regarding claims 2-5, 7-10, 12-15, 17-20, 22-25, 27-30, 32-35, 37-40, 42-45, and 47-50, Barad discloses the changeable item is the specification on the action or motion (programmed to move in a particular manner) of the virtual creature and robotic device (col. 3, lines 63-67); changeable items are the design of the virtual creature or the hardware and robotic device (col. 5, lines 52-65, Figure 7, Figures 13-17; Figures 21-22); the data processing means analyzes the taste and/or the living environment of the order sender based on the order sender's answer to the question and conducts the data processing according to the analysis result (Figure 5, col. 6, lines 30-40; col. 6, lines 49-59); and the data processing means forms the image data of computer graphic image of the virtual creature and robotic device (representational image showing he personalized toy) and/or the hardware reflecting the order sender's answer to the question, and transmits the image data to the first communication means via the communication path (Figure 5; col. 6, lines 60-66)

Regarding claims 26, 31, 36, 41 and 46, Barad discloses a system, method, device, and computer program for purchasing or receiving an order of a robotic device (personalized toy...may include other types of components, such as electronic components housed within the toy and programming for such electronics....toy may be programmed to move in a particular manner, col. 3, lines 57-67) to act or move based on the predetermined program, comprising: first communication means provided on the order sender side (accessing a computer in 110 is performed by customer 60) of the

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robotic device (collecting orders, col. 5, lines 50-61, Figure 5); second communication means provided on the order receiving side of the robotic device (processing ordering, col. 5, lines 50-51; col. 6, lines 52-61, Figure 5); a communication path for connecting the first and the second communication means (Figure 5; col. 5, lines 50-57; col. 6, lines 50-59); the second communication means comprising: question data transmission means for transmitting questions data on changeable items (select attributes to change) of the robotic device to the first communication means that accessed via the communication path (Figure 5, col. 5, line 66- col. 6, line 15; col. 6, lines 31-39); wherein said changeable items include internal conditions, which include at least one of a emotional tendency, an instinct tendency, or an action configuration program (the toy may be programmed to say a .....move in a particular way, col. 3, lines 63-65); and data processing means for conducting the predetermined data processing to construct the robotic device by reflecting the order sender's answer to the question to be transmitted from the first communication means via the communication path (Figure 5, col. 6, lines 37-40).

### ***Response to Arguments***

Applicant's arguments filed May 23, 2005 have been fully considered but they are not persuasive.

Applicant remarks that Barad does not include "wherein said changeable items include internal conditions, which include at least one of a emotional tendency, an instinct tendency, or an action configuration program".

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The Examiner notes that Barad discloses "the changeable items include internal conditions, which include at least one of a emotional tendency, an instinct tendency, or an action configuration program". Barad discloses a personalized toy which includes other types of components such as programming for such electronics (col. 3, lines 57-60). The "display" and "representational image" provided by the computer relative to personalized toy may therefore, also include representational information (col. 3, lines 60-63). Barad further discloses an example of a toy which may be programmed to move in a particular manner (col. 3, lines 63-65).

Such personalized toys which includes other types of components such as programming and the programming is to move in a particular manner are considered "the changeable items include internal conditions, which include at least one of a emotional tendency, an instinct tendency, or an action configuration program".

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,494,762 to Bushmitch et al. disclose a portable computer which is configured to receive programming that is automatically updated by a subscription service. The subscription service can be a virtual pet.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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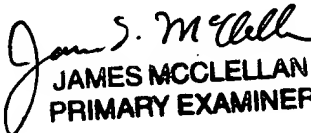
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 571-272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is ~~703-872-9306~~,  
(571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mtot  
August 4, 2005

  
JAMES MCCLELLAN  
PRIMARY EXAMINER